

OCT 19 2011

Mr. Jonathan Manns, Works Manager  
PPG Industries Inc., Lake Charles Plant  
P. O. Box 1000  
Lake Charles, LA 70602-1000

Re: Expedited Settlement Agreement-Final Order  
Docket No. CAA-06-2011-3537

Dear Mr. Manns:

Enclosed for your records is a copy of the fully executed Consent Agreement and Final Order (CAFO) for the CAA 112(r) violation found at the PPG Industries Inc., Lake Charles Plant located in Westlake, Louisiana.

If you have any questions regarding this matter, please do not hesitate to call. I may be reached by phone at (214) 665-6632 or by email at [GOODFELLOW.BOB@EPA.GOV](mailto:GOODFELLOW.BOB@EPA.GOV).

Sincerely,

Bob Goodfellow  
RMP Enforcement Officer  
Response and Prevention Branch  
EPA Region 6

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2011 OCT 19 PM 2:21  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

PPG Industries Inc., Lake Charles Plant

Westlake, LA

RESPONDENT

DOCKET NO. CAA-06-2011-3537

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (EPA), and PPG Industries Inc. in the above referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

## **II. STATUTORY AND REGULATORY BACKGROUND**

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

\* \* \* \*

(B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the

stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

9. In accordance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated the Chemical Accident Prevention Provisions, which are codified at 40 C.F.R. Part 68. These regulations, commonly referred to as the “Risk Management Program” (RMP) regulations, contain requirements for owners or operators of stationary sources concerning the prevention of accidental chemical releases.

10. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.

11. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

12. Pursuant to Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the Risk Management Program requirements and regulations in violation of such requirements and regulations.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. PRELIMINARY ALLEGATIONS**

13. The Respondent is a Pennsylvania corporation authorized to do business in the State of Louisiana. The Respondent’s principal place of business is located at One PPG Place, Pittsburgh, PA 15272.

14. The Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

15. The Respondent owns and/or operates a chemical manufacturing facility (North American Industrial Classification System Codes 325181 and 325998), located at 1300 PPG Drive, Westlake, LA 70669 (Facility).

16. The Respondent's chemical manufacturing facility is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

17. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 15.

18. At all times relevant to this CAFO, the Respondent was engaged in, among other things, the production of alkalis and chlorine.

19. Chlorine, vinyl chloride, ethyl chloride and anhydrous ammonia are "regulated substances". 40 C.F.R. § 68.130

20. The Respondent's chlor-alkali units and PHH unit are "processes" as that term is defined by 40 C.F.R. § 68.3.

21. At all times relevant to this CAFO, the Respondent had chlorine, vinyl chloride, ethyl chloride and anhydrous ammonia present in a process above the "threshold quantities" of 2,500, 10,000, 10,000, and 10,000 pounds, respectively, as determined by 40 C.F.R. § 68.115.

22. The processes identified in Paragraph 20 are "covered processes" as that term is defined by 40 C.F.R. § 68.3.

23. The Respondent's process units are subject to Program Level 3 as defined in 40 C.F.R. § 68.10(d), and must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

24. On or about April 26, 2010, an inspection of the Respondent's facility identified in paragraphs 20 – 21, was conducted by representatives of EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 ("the Inspection")

25. Section 113(d)(1) of the CAA, authorizes EPA to bring an administrative action for penalties that exceed \$295,000<sup>1</sup> and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

26. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

## **B. VIOLATIONS**

### **Count I - Failure to Document for Delegated Responsibilities Lines of Authority, through an Organization Chart or Similar Document**

27. 40 C.F.R. § 68.15 states:

- (a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.
- (b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.
- (c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

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<sup>1</sup> The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to \$295,000 for violations occurring after January 12, 2009.

28. Organizational charts and personnel listings provided to the inspector during and subsequent to the inspection failed to provide a comprehensive listing, including lines of authority, of individuals to whom specific requirements of the program had been delegated.

29. Therefore, the Respondent violated 40 C.F.R. § 68.15(c), by failing to document the lines of authority through an organization chart or similar document.

**Count II – Failure to Timely Address Findings of a Process Hazard Analysis**

30. 40 C.F.R. § 68.67(e) states the following:

The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

31. The Respondent conducted a Process Hazard Analysis (PHA) on the PHH VCM storage tanks for which a report was completed on September 6, 2007. The report identified 8 deficiencies with a hazard ranking of 2, which under company policy in effect at the time should have been addressed within 1 year. The Respondent acknowledged that the default timeline for level 2 deficiencies should have been 1 year, but the system that assigned due dates had erroneously assigned a 2 year deadline. Of the 8 level 2 deficiencies, 1 had been addressed within the 1 year deadline, 5 within the computer scheduled 2 year time frame, but beyond the 1 year window mandated by company policy, and two were still outstanding as of the date of the inspection.

32. Therefore, the Respondent violated 40 C.F.R. § 68.67 by failing to comply with its policy and address PHA findings in a timely manner.

**Count III – Failure to Timely Train Employees on Equipment Changes Covered by Management of Change**

33. 40 C.F.R. § 68.75 states:

(a) The owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

- (1) The technical basis for the proposed change;
- (2) Impact of change on safety and health;
- (3) Modifications to operating procedures;
- (4) Necessary time period for the change; and,
- (5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

34. On or about March 20, 2010, the Respondent changed out a Teflon lined vessel for one with a glass lining. As part of the Management of Change process operator training was identified as required, since operational concerns related to glass lined vessels are substantially different to those of Teflon lined ones. Although the vessel had been put into service, training was not provided to the operators until after the EPA inspector brought this to the Respondent’s attention.

35. Therefore, the Respondent violated 40 C.F.R. § 68.79(c) by failing to provide timely training to operators affected by the change.

**Count IV – Failure to Update Risk Management Plan**

36. 40 C.F.R. § 68.195(a) provides that the owner or operator of a stationary source for which an RMP was submitted shall correct the RMP as follows:



New accident history information - For any accidental release meeting the five-year accident history reporting criteria of § 68.42 and occurring after April 9, 2004, the owner or operator shall submit the data required under §§ 68.168, 68.170(j), and 68.175(l) with respect to that accident within six months of the release or by the time the RMP is updated under § 68.190, whichever is earlier.

37. 40 C.F.R. § 68.42(a) states:

The owner or operator shall include in the five-year accident history, all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

38. During the course of the inspection, the inspector identified a June 18, 2008, chlorine release which resulted in an on-site injury. As of the date of the inspection, the accident history had not been updated to include this release. Subsequent to the inspection, the Respondent reviewed their records and identified a total of 8 releases meeting the 68.42 definition of accidental release which had not been reported to EPA. The Respondent updated its accidental release data on January 19, 2011. The update included nine previously unreported accidental releases going back to July 19, 2006, eight of which occurred more than six months prior to the update.

39. Therefore, the Respondent violated 40 C.F.R. § 68.195 by failing to timely update the RMP with the July 19, 2006, December 12, 2006, April 25, 2007, July 5, 2007, June 18, 2008, October 15, 2008, November 8, 2008, and March 11, 2010, accidental release information.

#### **IV. TERMS OF SETTLEMENT**

##### **A. CIVIL PENALTY**

40. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which

authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000)<sup>2</sup> per day for each violation of the CAA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of Ninety-One Thousand and 00/100 Dollars (\$91,000.00).

41. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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<sup>2</sup> The maximum \$25,000 per day penalty was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009.

For overnight mail (non-U.S. Postal Service, e.g., Fed Ex), the check(s) should be remitted to:

U. S. Bank  
Government Lockbox 979077, U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381.

**PLEASE NOTE:** Docket number CAA-06-2011-3537 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Bob Goodfellow  
Environmental Scientist/RMP Enforcement Officer  
Superfund Prevention and Response Branch (6SF-PC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

and

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U. S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

42. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

43. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

45. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an

additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid.

In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R.

§ 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

46. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

47. This Consent Agreement is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy.

## **B. RETENTION OF ENFORCEMENT RIGHTS**

48. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

49. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

50. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

**C. COSTS**

51. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

**D. COMPLIANCE**

52. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

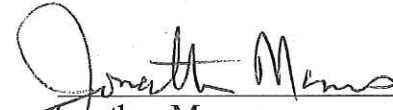
**E. EFFECTIVE DATE**

53. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

**FOR THE RESPONDENT:**


Date: 9/27/2011

  
Jonathan Manns  
Works Manager  
PPG Industries Inc., Lake Charles Plant

RECEIVED  
2011 SEP 30 AM 11:03  
SUPERFUND DIV.  
PREVENTION & RESPONSE  
BRANCH (6SF-P)

**FOR THE COMPLAINANT:**

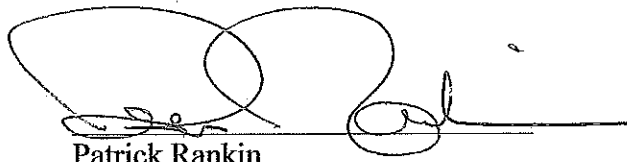
Date: 10-13-11

  
John Blevins  
Director  
Compliance Assurance and Enforcement Division  
U.S. EPA - Region 6

**V. FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

10/19/11

Patrick Rankin  
Regional Judicial Officer

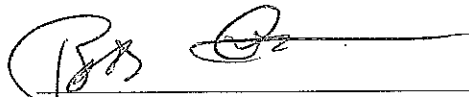


**CERTIFICATE OF SERVICE**

I hereby certify that on the 19 day of October, 2011, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED** \_\_\_\_\_

Mr. Jonathan Manns  
Works Manager  
PPG Industries Inc., Lake Charles Plant  
P. O. Box 1000  
Lake Charles, LA 70602-1000



Bob Goodfellow  
Environmental Scientist  
U. S. EPA – Region 6  
Dallas, Texas